Description of Administration Legislative Proposal
for
Harbor Services Fund and Harbor Services User Fee
12 June 1999

Introduction. The purpose of the Administration's legislative proposal is to provide for a source of funding for the dredging, development, operation, and maintenance of the nation's harbors. The legislation establishes a fee for services provided to commercial vessels for the use of Federal harbor projects within the United States. The legislation also repeals the Harbor Maintenance Tax (HMT), which was the subject of a Supreme Court ruling in March 1998. In that ruling, the Court concluded that the HMT, which imposed a charge based on the value of the commercial cargo being shipped, constituted a tax on goods in export transit and therefore violated the Export Clause of the Constitution. Because of this ruling the HMT is not being collected on exports. The fee established in this legislation avoids the constitutional infirmities of the HMT. The assessment is a user fee, not a tax: it fairly approximates the harbor benefits and services users receive, and is imposed on the commercial vessel itself, not on the cargo therein.

In the aggregate, the user fees will generate funds annually sufficient to pay the Department of the Army's annual costs of developing, operating, and maintaining the nation's harbor channels and related facilities. The intent of the legislative proposal is that the total amount of the user fees collected pursuant to this proposed legislation will be available each fiscal year for appropriation to fund the projected total annual expenditures of the Department of the Army for harbor development, operation, and maintenance and that the user fees will generate sufficient funds for that purpose.

Harbor Services Fund. The new user fee revenues will be placed in a special account called the Harbor Services Fund (HSF). Balances from the Harbor Maintenance Trust Fund will be transferred to the HSF. Expenditures from the HSF will be subject to annual appropriation, up to the total amount of the prior year receipts in the HSF. Because the proposal is deficit neutral, there is no need for a "pay-as-you-go" (PAYGO) offset. For budget scorekeeping purposes, the user fees will be treated as offsetting receipts. The President's budget for FY 2000 includes $951 million to be derived from the Harbor Services Fund, consisting of $258 million for Construction, General and $693 million for Operation and Maintenance, General. Compare this to the $460 million for Operation and Maintenance, General from the Harbor Maintenance Trust Fund and $109 million for Construction, General from the general fund proposed in the President's FY 1999 budget. That is an increase of $233 million for Operation and Maintenance, General, and an increase of $149 million for Construction, General for an overall increase of $382 million. **Because of this offsetting receipts treatment, the FY 2000 budget request is 67 percent higher than the FY 1999 budget for these categories.**

The Administration estimates that the annual revenue needed to finance HSF activities for the next five years is about $980 million per year. Of this amount, it is estimated that $600-650 million will be spent on Federal operation and maintenance (O&M) annually. About $300 million will be available to fund the Federal share of channel and harbor development projects, primarily port deepening. Activities that will be funded from the proposed HSF, subject to appropriation, include:

Expenditures as Existed under the HMT and Continuing under the HSF

-100 percent of the Corps O&M expenditures for Federal channel and harbor projects,
-expenses incurred in the administration of the HSF.

Expenditures as Existed under the HMT and Reduced under the HSF

-100 percent of the HMT financed expenditures by the St. Lawrence Seaway Development Corporation (SLDC), including SLDC rent payments; this legislative proposal reserves funds as may be necessary to implement legislation to establish the SLDC as a Performance Based Organization.

Additional Proposed Expenditures under the HSF

-the Federal share of construction costs of channel and harbor development projects,
-the additional costs to the Corps of maintaining the reserve capability of Corps dredges to perform dredging on Federal channel and harbor projects,
-audit costs incurred in connection with administration of the user fee,
-the funding of up to $100 million per year for the dredging of berthing areas, the construction and maintenance of bulkheads, and credits toward the non-Federal shares of eligible Federal harbor development or O&M activities at ports where the average amount of the fee assessed during the three previous consecutive fiscal years exceeds the average Federal expenditure from the HSF at that port during the same three fiscal years by $10 million.

The dredging of Federal navigation channels would be the primary maintenance activity financed by the HSF, while the harbor development construction activity would primarily involve channel deepening projects.

Harbor Services User Fee (HSUF). The Administration proposes to establish a user fee to be paid by the primary users of Federal channel and harbor projects, namely the commercial vessel owners/operators. Ship size, movement frequency, service demand and the operational characteristics of particular vessel categories were the principal factors used to determine the level of harbor use/services required, and the fee is based on these factors.

Ship size is one of the key factors in measuring the extent of use and service from channels. *Vessel capacity*, expressed as *vessel capacity units* (VCUs), is the characteristic used to measure ship size. VCUs are a volumetric measurement of ship size. VCUs are based on a vessel's *net tonnage* (NT) (also known as *net registered tonnage*), or, in the case of containerships and cruise ships, *on gross tonnage* (GT) (also known as *gross registered tonnage*). Gross tonnage is used for these latter vessel categories to account for cargo and/or passenger space not included in a vessel's *net tonnage* rating.

Vessels are divided into four service categories: (1) *General*; (2) *Bulker*; and (3) *Tanker* vessels; and (4) *Cruise ships*. The four categories were chosen because there are significant differences in the level of services each requires.

General vessels, which include containerships and general cargo vessels, predominantly move general cargo, including break-bulk, neo-bulk and containerized cargo. They operate across the largest number of ports in the national port system. They also operate on set scheduled time-sensitive movements requiring channels to be maintained at full dimensions. This category of vessel is also the reason for most future channel deepening projects.

Bulker ships and barges move dry bulk cargoes, such as grain, ore, and fertilizer, under contract or proprietary carriage. *Tanker* vessels and barges convey liquid bulk cargos, primarily crude and refined petroleum, usually as contract or proprietary shipments. In terms of the size of the port system required, tankers rank second, and bulkers rank third. Because these vessels usually do not operate on strict liner service time schedules, they have increased flexibility to wait for tides or one way traffic scheduling. As a result, these service categories do not require the level of channel reliability required by the *General* category. Some future channel improvements can be attributed to these categories.

Cruise ships convey passengers on scheduled sailings to U.S. and/or foreign ports. This category of vessels uses the smallest extent of the port system, only about two percent of the berths nationwide. While they do operate on strict schedules, they generally sail at considerably less draft than the other categories.

Fee Schedule. Because of these use and service differences, the fee schedule consists of rates specific to each of the four vessel categories, with the rates representing a fair approximation of the services provided. Thus the rates per ship movement are:

Category of Vessel	Rate per VCU Per Movement	Fee Schedule Fee per VCU per Voyage
General	$0.609	$2.74
Bulker	$0.06	$0.12
Tanker	$0.14	$0.28
Cruise	$0.038	$0.12

The fee would be collected by the U.S. Customs Service. It would be assessed on all commercial vessels greater that 3,000 gross tons in accordance with the above schedule. Operationally, the fee would be collected on a voyage basis for all vessel categories. The rates "per movement" for each vessel category were converted to equivalent fees "per voyage" by accounting for the two movements (inbound and outbound) associated with each port use and the average number of port uses per voyage for each vessel type.

Exemptions. The exemptions in the Administration's legislative proposal will mirror the exemptions that were included in Title XIV of the Water Resources Development Act of 1986 which authorized the original Harbor Maintenance Tax. In the Administration's proposal, no fee will be imposed for port use by vessels of the United States or any agency or instrumentality thereof. Nor would a fee be imposed in connection with port use for intraport movements; for transporting commercial cargo from the mainland United States to Alaska, Hawaii, or any possession of the United States, for ultimate use or consumption in Alaska, Hawaii, or any possession of the United States or for transporting commercial cargo from Alaska, Hawaii, or any possession of the United States to the mainland United States for ultimate use or consumption in the mainland United States (with the exception of Alaskan crude oil); for transporting commercial cargo within Alaska, Hawaii, or a possession of the United States; and for transporting passengers on U.S. flag vessels operating solely within the state waters of Alaska or Hawaii and adjacent international waters.

The exemption for port use by the United States preserves the Government's sovereign immunity and its ability to accomplish governmental tasks in ports without interference or administrative burden. The exemptions pertaining to domestic vessel movements between Alaska, Hawaii, and the possessions of the United States acknowledge and protect the peculiar port-dependence of non-contiguous states and possessions of the United States. These states and possessions, unlike the other 48 states, are critically dependent on domestic shipments.

Rate Adjustment. The proposed legislation authorizes promulgation of such regulations as may be necessary to provide for a periodic review of amounts collected to ensure that the fees charged fairly approximate the cost of services provided to commercial vessels for port use. Adjustment of the rate of the fee for any one or more of the bulker, tanker, or cruise vessel categories by up to plus or minus $0.05, or in the case of the general vessel category, by up to plus or minus $0.25. If larger changes are required, additional legislation would be needed. In addition, the legislative proposal calls for a reduction in the fee if the amount collected exceeds the amount appropriated.

Examples. The following summarizes several examples that are presented in more detail in attachment 1. The examples present the amount of the new Harbor Services User Fee (HSUF) as compared to the old Harbor Maintenance Tax (HMT). Cargo values are shown <u>only</u> to make this comparison. The cargo value is needed to calculate the old HMT. Cargo value has no relation to the way the proposed fee is computed.

Definitions: VCU= Vessel Capacity Unit; NT = net tonnage; GT = gross tonnage; mt = metric tons; TEU = twenty-foot equivalent unit (container)

GENERAL: This is the major vessel category. Most of the vessel capacity is in containerships which operate on regular scheduled port calls. About 44% of all VCUs are in this category.

Example 1 - General - 4,200 TEU Containership
Voyage: Northern Europe - Boston - New York - Norfolk - Northern Europe
VCU = 57,000 GT
Carrying $140 million in cargo in 6,000 TEU round-trip
HSUF = $2.74 per VCU or $26 per TEU
HMT = $3.07 per VCU or $29 per TEU

Example 2 - General - 4,800 TEU Containership
Voyage: Far East - Los Angeles - Seattle - Far East
VCU = 65,000 GT
Carrying $190 million in cargo in 7,560 TEU round-trip
HSUF = $2.74 per VCU or $24 per TEU
HMT = $3.65 per VCU or $31 per TEU

BULKER: About 16% of all VCUs are in this group. Bulkers are usually engaged in point to point trade having empty back hauls.

Example 1 - Bulker
Voyage: New Orleans - Japan
VCU = 20,000 NT
Bulker carrying 55,000 metric tons (mt) of grain valued at $10 million
HSUF = $0.12 per VCU or $0.04 per mt
HMT = $0.625 per VCU or $0.23 per mt

Example 2 - Bulker
Voyage: Norfolk - Japan
VCU = 50,000 NT
Bulker carrying 100,000 mt of coal valued at $5 million
HSUF = $0.12 per VCU or $0.06 per mt
HMT = $0.125 per VCU or $0.0625 per mt

TANKER: About 16% of all VCUs are in this category. Tankers are usually engaged in point to point trade to specific oil and chemical processing facilities and often have empty back hauls.

Voyage: Venezuela - Philadelphia
VCU = 50,000 NT
Tanker carrying 150,000 mt of crude oil valued at $18 million
HSUF = $0.28 per VCU or $0.09 per mt
HMT = $0.45 per VCU or $0.15 per mt

CRUISE: About 24% of all VCUs are in this category. Cruise ships operate on a regular interval of port calls.

Voyage: Vancouver - Ketchikan- Juneau - Valdez - Seward - Vancouver
VCU = 55,000 GT
Cruise ship with $3 million in fares for 1200 passengers
HSUF = $0.12 per VCU or $5.50 per passenger
HMT = $0.07 per VCU or $3.13 per passenger

Legislation. On 30 April 1999, the Assistant Secretary of the Army (Civil Works) transmitted the Administration's legislative proposal to Congress for its consideration. The congressional legislative process will, of course, offer additional opportunities for discussion and comment as the legislation moves forward.

ATTACHMENT 1 - HARBOR SERVICE USER FEE DETAILED EXAMPLES

The examples present the amount of the new Harbor Services User Fee (HSUF) as compared to the old Harbor Maintenance Tax (HMT). Cargo values are shown only to make this comparison. The cargo value is needed to calculate the old HMT. Cargo value has no relation to the way the proposed fee is computed.

GENERAL: This is the major vessel category. Most of the vessel capacity is in containerships which operate on regular scheduled port calls. About 44% of all VCUs are in this category.

Example 1 - General

4,200 TEU Containership carrying $140 million in cargo in 6,000 TEU round-trip
VCU = 57,000 GT (Gross Tonnage)
Voyage: Northern Europe - Boston - New York - Norfolk - Northern Europe

This example shows a containership with multiple port calls on the East Coast. The vessel would be assessed $2.74/VCU x 57,000 VCU = $156,180 upon entering Boston for the entire voyage. The fee would be paid by the vessel operator.

The HMT for this voyage carrying $140 million in cargo in 6,000 TEU (round-trip) is $175,000 and it is paid by the shippers. This is equivalent to $3.07/VCU (or $29/TEU) for the entire voyage under the HMT compared to $2.74/VCU (or $26/TEU) under the HSUF.

Example 2 - General

4,800 TEU Containership carrying $190 million in cargo in 7,560 TEU round-trip
VCU = 65,000 GT
Voyage: Far East - Los Angeles - Seattle - Far East

This example shows a containership with multiple port calls on the West Coast. The vessel would be assessed $2.74/VCU x 65,000 VCU = $178,100 upon entering Los Angeles for the entire voyage. The fee would be paid by the vessel operator.

The HMT for this voyage carrying $190 million cargo in 7,560 TEU (round-trip) is $237,500 and is paid by the shipper. This is equivalent to $3.65/VCU (or $31/TEU) for the entire voyage under the HMT compared to $2.74/VCU (or $24/TEU) under the HSUF.

BULKER: About 16% of all VCUs are in this group. Bulkers are usually engaged in point to point trade having empty back hauls.

Example 1 - Bulker

Bulker carrying 55,000 mt (metric tons) of grain worth $10 million
VCU = 20,000 NT (Net Tonnage)
Voyage: New Orleans - Japan

This example shows a bulker entering New Orleans empty (ballast) and then sailing from New Orleans to Japan. The vessel would be assessed $0.12/VCU x 20,000 VCU = $2,400 at New Orleans and this fee would be paid by the vessel operator.

The HMT for this voyage carrying $10 million in grain is $12,500 and it is paid by the shipper. This is equivalent to $0.625/VCU (or $0.23/mt) under the HMT compared to $0.12/VCU (or $0.04/mt) under the HSUF.

The Panama Canal charge on this shipment is $78,385.

Example 2 - Bulker

Bulker carrying 100,000 mt of coal worth $5 million
VCU = 50,000 NT
Voyage: Norfolk - Japan

This example shows a bulker entering Norfolk empty (ballast) and then sailing from Norfolk to Japan. The vessel would be assessed $0.12/VCU x 50,000 VCU = $6,000 at Norfolk. This fee would be paid by the vessel operator.

The HMT for this voyage carrying $5 million in coal is $6,250 and it is paid by the shipper. This is equivalent to $0.125/VCU (or $0.0625/mt) under the HMT compared to $0.12/VCU (or $0.06/mt) under the HSUF.

TANKER: About 16% of all VCUs are in this category. Tankers are usually engaged in point to point trade to specific oil and chemical processing facilities and often have empty back hauls.

Tanker carrying 150,000 mt of crude oil worth $18 million
VCU = 50,000 NT
Voyage: Venezuela - Philadelphia

This example shows a tanker entering refining facilities in Philadelphia from Venezuela loaded with crude oil and then exiting from Philadelphia empty (ballast). The vessel would be assessed $0.28/VCU x 50,000 VCU = $14,000 at Philadelphia and it would be paid by the vessel operator.

The HMT for this voyage carrying $18 million in crude oil is $22,500 and it is paid by the shipper. This is equivalent to $0.45/VCU (or ($0.15/mt) under the HMT compared to $0.28/VCU (or $0.09/mt) under the HSUF.

CRUISE: About 24% of all VCUs are in this category. Cruise ships operate on a regular interval of port calls.

Cruise ship with $3 million in fares for 1200 passengers
VCU = 55,000 GT
Voyage: Vancouver - Ketchikan- Juneau - Valdez - Seward - Vancouver

This example shows a cruise ship with multiple port calls in Alaska departing and returning to Vancouver, Canada. The vessel would be assessed $0.12/VCU x 55,000 VCU = $6,600 entering Ketchikan for the entire voyage.

The HMT for this voyage having $3.0 million in fares for 1,200 passengers is $3,750. This is equivalent $0.07/VCU (or $3.13/passenger) for the entire voyage under the HMT compared to $0.12/VCU (or $5.50/passenger) under the HSUF.